



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG-2019-0952]

RIN 1625-AA01

Anchorage Regulations; Special Anchorages Areas within the First Coast Guard

District

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The First Coast Guard District is removing notes from its special anchorage area regulations and removing language from the text of four of these regulations because those provisions are inconsistent with simply designating the location of a special anchorage area. These existing notes and regulatory text provisions, which contain obsolete and duplicative language, will be replaced with a note in a new section we are adding that will apply to all special anchorage area regulations in the First Coast Guard District. The note will advise interested persons that state and local regulations may apply and that they should contact other authorities, such as the local harbormaster, to ensure compliance with any such applicable regulations. These changes are primarily editorial in nature and are intended to clarify and update First Coast Guard District special anchorage area regulations. This rule will not create, remove, or change any previously established special anchorage areas in the First Coast Guard District.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0952 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, contact Mr. Craig Lapiejko, Waterways Management at First Coast Guard District, telephone 617-223-8351, e-mail craig.d.lapiejko@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

| | |
|--------|---------------------------------|
| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| FR | <i>Federal Register</i> |
| NPRM | Notice of proposed rulemaking |
| OMB | Office of Management and Budget |
| SAA | Special Anchorage Area |
| § | Section |
| U.S.C. | United States Code |

II. Background Information and Regulatory History

On July 17, 2019, the First Coast Guard District received a request to remove the note in 33 CFR 110.32 – Hingham Harbor, Hingham, Massachusetts. This regulation, note included, was added to 33 CFR part 110 soon after the Coast Guard was authorized Federal anchorage regulations more than 50 years ago. In response, on April 8, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Anchorage Regulations; Special Anchorages Areas within the First Coast Guard District" (86 FR 18224). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to the revision of the notes. During the comment period that ended on June 7, 2021, we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 2071; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 00170.1. The First Coast

Guard District Commander has determined that revising the notes for its special anchorage area (SAA) regulations and to remove language from the text of four of these regulations because those provisions are inconsistent with simply designating the location of a special anchorage area.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published April 8, 2021.

The commenter disagreed that the changes were primarily editorial in nature and that they were intended to clarify and update the notes. The commenter further provided that the town had relied on the notes to enforce a prohibition on fixed piles or stakes for the past 50 years. The commenter requested that any proposed change to the notes currently cited in the CFR for Hingham Harbor SAAs be exempted from those changes. As we stated in our April 8, 2021, NPRM, in general, there is a misunderstanding of the Coast Guard's authority with regard to special anchorage grounds. The Coast Guard does not regulate vessel activities within SAAs as it does in anchorage grounds. The only effect of designating a SAA under the authority of 33 U.S.C.2071 is that vessels under 20 meters in length (65 feet) anchored in these areas do not have to exhibit the lights, shapes or sounds signals required by Rule 30 and 35 of the Inland Navigation Rules. Other vessels active within these SAA may be regulated by local authorities as long as local regulations do not conflict with Federal regulations which may be promulgated under other statutory authority. The Town of Hingham, similar to other State and/or local governments, promulgated ordinances and those ordinances were often cited as notes within some SAA regulations, but those notes were incorrectly interpreted as federal regulations. In a rule published August 3, 1968 (33FR 11079), the Coast Guard added § 110.32 to 33 CFR part 110 which created five separate SAAs in Hingham Harbor, MA.

That regulation was issued in response to a request from the Chairman of the Board of Selectmen of Hingham, MA. The note in that regulation said that:

- These areas will be principally used by yachts and other recreational craft.
- Temporary floats or buoys for marking anchors will be allowed in the areas but fixed piles or stakes may not be placed.
- The anchoring of vessels and the placing of moorings in these areas will be under the jurisdiction of the local Harbor Master.

The inclusion of these references to ordinances in Part 110 is not desirable as it appears that the Coast Guard has adopted similar provisions into the federal regulations. As such, the Coast Guard is removing the note from the regulation. The Coast Guard interprets the note as indicating that the rule itself would not forbid the installation of piles or stakes in Hingham Harbor.

In the regulatory text, we did amend the instruction for §110.30, to correct the reference to where the three notes to be removed in that section were located. Also, we updated the authority citation for Part 110 to reflect that Section 8501 the William M. (Mac) Thornberry National Defense Authorization Act, Public Law 116-283, transferred Section 7 Rivers and Harbors Appropriations Act of 1915 authority for anchorage grounds to 46 U.S.C. 70006, and the reference to the edition of the Department of Homeland Security delegation.

This rule will remove existing notes in regulations for SAAs in the First Coast Guard District and removes the regulatory provisions in §§110.25, 110.29, 110.50d, and 110.60 that do not designate the location of SAAs. Additionally, we are adding §110.3, entitled, “First Coast Guard District Special Anchorage Areas.” Its text identifies SAA regulations for the First Coast Guard District (§110.4 through §110.60) and its note advises those planning to use a SAA in the First District that state ordinances, local ordinances, or both, may apply to those anchoring there and that the local harbormaster is

often the best source of information about any such ordinances. These ordinances may involve, for example, compliance with direction from the local harbormaster when placing or using moorings within the anchorage.

These changes are primarily editorial in nature and are intended to clarify and update the notes in this part. This rule does not create, remove, or change any SAA. Vessels less than 65 feet in length, when at anchor in these SAAs, are not required to sound signals or display anchorage lights or shapes when at anchor.

This rule will remove notes from the following sections in 33 CFR part 110 that designate SAAs in the First Coast Guard District:

Section 110.4, Penobscot Bay, Maine.

Section 110.5, Casco Bay, Maine.

Section 110.6, Portland Harbor, Portland, Maine (between Little Diamond Island and Great Diamond Island).

Section 110.8, Lake Champlain, New York and Vermont.

Section 110.26, Marblehead Harbor, Marblehead, Massachusetts.

Section 110.29, Boston Inner Harbor, Massachusetts.

Section 110.30, Boston Harbor, Massachusetts.

Section 110.31, Hull Bay and Allerton Harbor at Hull, Massachusetts.

Section 110.32, Hingham Harbor, Hingham, Massachusetts.

Section 110.37, Sesuit Harbor, Dennis, Massachusetts.

Section 110.38, Edgartown Harbor, Massachusetts.

Section 110.45a, Mattapoisett Harbor, Mattapoisett, Massachusetts.

Section 110.50, Stonington Harbor, Connecticut.

Section 110.50a, Fishers Island Sound, Stonington, Connecticut.

Section 110.50b, Mystic Harbor, Groton and Stonington, Connecticut.

Section 110.50c, Mumford Cove, Groton, Connecticut.

Section 110.51, Groton, Connecticut.

Section 110.52, Thames River, New London, Connecticut.

Section 110.53, Niantic, Connecticut.

Section 110.55, Connecticut River, Connecticut.

Section 110.55a, Five Mile River, Norwalk and Darien, Connecticut.

Section 110.55b, Connecticut River, Old Saybrook, Connecticut.

Section 110.56, Noroton Harbor, Darien, Connecticut.

Section 110.58, Cos Cob Harbor, Greenwich, Connecticut.

Section 110.59, Eastern Long Island, New York.

Section 110.60, Captain of the Port, New York.

For a specific listing of the notes being removed, please review the regulatory text at the end of this rule.

Additionally, this rule removes regulatory text from four CFR sections because that text is inconsistent with simply designating the location of a SAA. In §110.25, Salem Sound, Massachusetts, we are removing the last two sentences of paragraph (c). In §110.29, Boston Inner Harbor, Massachusetts, we are removing paragraph (d)(2). In §110.50d, Mystic Harbor, Noank, Connecticut, we are removing paragraph (b). Finally, in §110.60, Captain of the Port, New York; we are removing paragraphs (c)(13)(i), (d)(7)(i), and (d)(9)(i).

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

These changes are primarily editorial in nature and are intended to clarify and update notes for First Coast Guard District SAA regulations and to remove regulatory text in four CFR sections that is not needed to designate the location of SAAs. This rule will not create, remove, or change any previously established SAAs in the First Coast Guard District

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We reach this conclusion based on the reasons stated in section IV.A above.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small

Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule will remove existing notes in regulations for SAAs in the First Coast Guard District and remove regulatory text in four CFR sections that is not needed to designate the location of SAAs. These existing notes and provisions in regulatory text, will be replaced with a note in a newly added section that will apply to all SAA regulations in the First Coast Guard District. The note will advise those planning to use a SAA in the First Coast Guard District that state ordinances, local ordinances, or both, may apply to those anchoring there and that the local harbormaster is often the best source of information about any such ordinances. It is categorically excluded from further review under paragraph A3 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110-- ANCHORAGE REGULATIONS

1. The authority citation for part 110 is revised to read as follows:

Authority: 33 U.S.C. 2071; 46 U.S.C. 70006, 70034; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add §110.3 to read as follows:

§110.3 First Coast Guard District Special Anchorage Areas.

Regulations designating special anchorage areas in the First Coast Guard District appear in §§110.4 through 110.60.

Note 1 to §110.3: Those planning to use these special anchorage areas are advised that state ordinances, local ordinances, or both, may apply. The local harbormaster is often the best source of information about any such ordinances.

§110.4 [Amended]

3. In §110.4, remove the notes to paragraph (a), (b), (c) and (d).

§110.5 [Amended]

4. In §110.5, remove the notes following paragraphs (a-1), (d), (e) and (f).

§110.6 [Amended]

5. In §110.6, remove the note at the end of the section.

§110.8 [Amended]

6. In §110.8, remove the notes following paragraphs (c-2) and (i).

§110.25 [Amended]

7. In §110.25, remove the last two sentences in paragraph (c).

§110.26 [Amended]

8. In §110.26, remove the note at the end of the section.

§110.29 [Amended]

9. In §110.29(d), remove the designation “(1)”, remove paragraph (d)(2), and remove the note to paragraph (d).

§110.30 [Amended]

10. In §110.30, remove the note to paragraph (h), the note to paragraphs (j), (k), and (l) and the note to paragraphs (m), (n), (o), (p) and (q).

§110.31 [Amended]

11. In §110.31, remove the note at the end of the section.

§110.32 [Amended]

12. In §110.32, remove the note at the end of the section.

§110.37 [Amended]

13. In §110.37, remove the note at the end of the section.

§110.38 [Amended]

14. In §110.38, remove the note at the end of the section.

§110.45a [Amended]

15. In §110.45a, remove the note at the end of the section.

§110.50 [Amended]

16. In §110.50, remove the note at the end the section.

§110.50a [Amended]

17. In §110.50a, remove the note at the end of the section.

§110.50b [Amended]

18. In §110.50b, remove the note at the end of the section.

§110.50c [Amended]

19. In §110.50c, remove the note at the end of the section.

§110.50d [Amended]

20. In §110.50d, redesignate paragraph (a) as an undesignated paragraph and remove paragraph (b).

§110.51 [Amended]

21. In §110.51, remove the note at the end of the section.

§110.52 [Amended]

22. In §110.52, remove the note at the end of the section.

§110.53 [Amended]

23. In §110.53, remove the note at the end of the section.

§110.55 [Amended]

24. In §110.55, remove the notes following paragraphs (b), (c), (e), (e-1), (e-2) and (g).

§110.55a [Amended]

25. In §110.55a, remove the note at the end of the section.

§110.55b [Amended]

26. In §110.55b, remove the note at the end of the section.

§110.56 [Amended]

27. In §110.56, remove the note at the end of the section.

§110.58 [Amended]

28. In §110.58, remove the note at the end of the section.

§110.59 [Amended]

29. In §110.59, remove the note following paragraph (g).

§110.60 [Amended]

30. In §110.60, remove the notes to paragraphs (a)(2) and (13); (b)(5) and (6); (c)(3); (5) and (6); (d)(2), and (5), and remove paragraphs (c)(13)(i) and (ii), (d)(7)(i) and (ii), and (d)(9)(i) and (ii).

Dated: March 3, 2023.

J. W. Mauger,

Rear Admiral, U.S. Coast Guard,

Commander, First Coast Guard District.

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